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BELL SOUTH

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RECEIVED

March 15, 2000

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

**Re: Written Ex Parte – In the Matter of One Call Communications, Inc.
d/b/a Opticom Petition for Waiver of PIC Change Authorization and
Verification Requirements, 47 C.F.R. Sections 64.1100-64.1190;
CC Docket No. 94-129**

Dear Ms. Salas:

BellSouth Corporation and BellSouth Public Communications, Inc. ("BellSouth") respectfully submit this *ex parte* in support of Bell Atlantic's opposition¹ to the above-captioned petition. On February 28, 2000, One Call Communications, Inc. ("One Call") filed a petition seeking a waiver of the Commission's rules governing changes in the selection of a primary interexchange carrier (i.e., PIC change rules).² One Call requests a waiver of these PIC change rules as part of a business transaction between Cleartel Communications, Inc. ("Cleartel") and One Call.

¹ See Opposition of Bell Atlantic, *One Call Communications, Inc. d/b/a Opticom Petition for Waiver of PIC Change Authorization and Verification Requirements*, 47 C.F.R. §§ 64.1100-64.1190, CC Docket No. 94-129 (filed Mar. 9, 2000) ("Bell Atlantic Opposition").

² Petition for Emergency Waiver and Request for Expedited Treatment, *One Call Communications, Inc. d/b/a Opticom Petition for Waiver of PIC Change Authorization and Verification Requirements*, 47 C.F.R. Sections 64.1100-64.1190, CC Docket No. 94-129 (filed Feb. 28, 2000); Amendment to Petition For Emergency Waiver and Request For Expedited Treatment, CC Docket No. 94-129 (filed Mar. 10, 2000).

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In its opposition, Bell Atlantic urged the Commission to deny One Call's waiver petition for its failure to comply with the statutory and regulatory obligations regarding payphone compensation. BellSouth wholly concurs. As the Common Carrier Bureau has previously concluded, "[w]aiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest."³ Granting relief to One Call will not serve the public interest. A carrier such as One Call that blatantly fails to comply with federal mandates should not receive special treatment from the Commission.

As Bell Atlantic demonstrated, One Call is in clear violation of Section 276 of the Telecommunications Act of 1996 ("1996 Act") and the Commission's implementing rules.⁴ Under Section 276 of the 1996 Act⁵ and the Commission's rules, interexchange carriers ("IXCs") are required to compensate payphone service providers, including local exchange carrier ("LEC") payphone service providers, for certain completed intrastate and interstate calls that originated from the payphone service providers' payphones.⁶

BellSouth is in a similar situation as Bell Atlantic. Under the Commission's rules, One Call is required to pay BellSouth for all compensable calls that originate from BellSouth's payphones and are carried by One Call. However, to date, One Call has refused such payment in direct violation of the Commission's rules. The Common Carrier Bureau "has specifically stated that IXCs *must* pay compensation upon receipt of the LEC's certification. There is no exception to this absolute obligation to pay upon receipt of certification."⁷

³ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, CC Docket No. 94-129, Order, DA 99-1820, ¶ 4 (rel. Sept. 10, 1999).

⁴ See Bell Atlantic Opposition at 1-2.

⁵ 47 U.S.C. § 276.

⁶ Section § 64.1300 (a) of the Commission's rules provides as follows: "every carrier to whom a completed call from a payphone is routed shall compensate the payphone service provider for the call at a rate agreed upon by the parties by contract." 47 C.F.R. § 64.1300(a). The Commission's rules further mandate that, "in the absence of an agreement . . . the carrier is obligated to compensate the payphone service provider at a per-call rate of \$.24." 47 C.F.R. § 64.1300(c).

⁷ *Ameritech Illinois, et al. v. MCI Telecommunications Corporation*, File Nos. E-98-51, E-98-53, Memorandum Opinion and Order, DA 99-2449, ¶ 26 (Common Carrier Bureau, rel. Nov. 8, 1999); see also *Bell Atlantic-Delaware, et al. v. Frontier Communications Services, Inc., et al.*, File No. E-98-48, Memorandum Opinion and Order, DA 99-1971, ¶ 27 (Common Carrier Bureau, rel. Sept 24, 1999).

BellSouth has fulfilled its obligations under the Commission's payphone compensation scheme. Specifically, BellSouth has certified to One Call that it complies with the Commission's compensation eligibility requirements. In addition, as required by the Commission's rules,⁸ BellSouth has provided One Call with its quarterly list of payphones between October 1, 1997 and December 31, 1999.

As with Bell Atlantic, One Call owes BellSouth compensation for a period of more than two years but refuses to pay. The Commission requires IXCs to make compensation payments "at least on a quarterly basis."⁹ After adoption of the new payphone compensation scheme, the Commission specifically required that "[t]he payment for the October 1997 through December 31, 1997 period must be paid no later than April 1, 1998."¹⁰ Despite repeated formal¹¹ and informal demands, One Call has never paid BellSouth for this initial period. Nor has the company made any of the required subsequent payments. Most recently, BellSouth sought relief from the Commission by requesting inclusion of this matter on the accelerated docket.¹² To date, the Enforcement Bureau has yet to act on that request.

The Commission's denial of One Call's waiver petition would promote the public interest. As Bell Atlantic explained, "[d]enial of One Call's waiver request would not result in disruption of service" to the Bell Atlantic (or BellSouth) payphones that currently have Cleartel as the presubscribed IXC.¹³ BellSouth, like Bell Atlantic, has well-established procedures for continuing service when an IXC goes out of business or otherwise decides to stop serving a payphone. These procedures, which include allowing the location provider to select a new presubscribed carrier, are more than adequate to ensure uninterrupted service.

⁸ See 47 C.F.R. § 64.1310(c).

⁹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Memorandum Opinion and Order, DA 98-481, ¶ 4 (rel. Mar. 9, 1998).

¹⁰ *Id.*

¹¹ See Letter from John Golden, AVP, BellSouth Public Communications, Inc. to Ann Bernard, Corporate Counsel, One Call Communications, Inc. (dated Aug. 19, 1999) (copy attached).

¹² See Letter from M. Robert Sutherland, General Attorney to Glenn T. Reynolds, Chief, Enforcement Bureau (dated Nov. 18, 1999) (copy attached).

¹³ Bell Atlantic Opposition at 3.

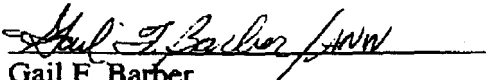
Ms. Magalie Roman Salas
March 15, 2000
Page 4

Finally, it is not BellSouth's intention to interfere with One Call's business agreement with Cleartel. However, we have a direct stake in being lawfully compensated as prescribed by Commission rules and strongly object to granting a special concession to a carrier that continues to knowingly violate its regulatory obligations. Accordingly, BellSouth urges the Commission to deny the instant petition. If the Commission decides to grant One Call's waiver request, it should explicitly condition grant of the waiver on One Call's immediate payment of all past due per-call compensation owed to local exchange carriers such as BellSouth and Bell Atlantic as well as a commitment to make all future payments when due.

Respectfully submitted,

BELLSOUTH PUBLIC COMMUNICATIONS, INC.

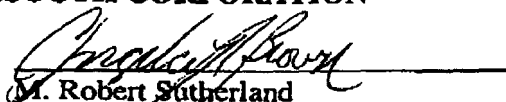
By:


Gail F. Barber
2nd Floor
75 Bagby Drive
Homewood, AL 35209
(205) 943-2884

Its Attorney

BELLSOUTH CORPORATION

By:


M. Robert Sutherland
Angela N. Brown
1155 Peachtree Street, N.E.
Suite 1700
Atlanta, GA 30309-3610
(404) 249-3392

Its Attorneys

Attachments

cc:	Cheryl A. Tritt	John M. Goodman
	Joan E. Neal	Frank Lamancusa
	Cristina Chou Pauze	Colleen Heitkamp
		William Cox

Ex Parte
CC Docket No. 94-129
March 15, 2000
Doc. No. 120943

CERTIFICATE OF SERVICE

I do hereby certify that I have this 15 day of March, 2000, served the following parties to this action with a copy of the foregoing **BELLSOUTH EX PARTE**, reference CC Docket No. 94-129, by hand delivery or by placing a true and correct copy of the same in the United States Mail, addressed to the parties listed below.

Magalie Roman Salas*
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Colleen Heitkamp*
Telecommunications Consumer Division
Enforcement Bureau
Federal Communications Commission
445 12th Street SW, Room 5-A847
Washington, DC 20554

International Transcription Service, Inc.*
445 12th Street, SW
CY-B402
Washington, DC 20554

John M. Goodman
Bell Atlantic
1300 I Street NW
Washington, DC 20005

Frank G. Lamancusa*
Deputy Division Chief
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Cheryl A. Tritt
John E. Neal
Cristina Chou Pauzé
Morrison & Foerster LLP
2000 Pennsylvania Avenue, NW
Suite 5500
Washington, DC 20006

William Cox*
Common Carrier Bureau
Federal Communications Commission
445 12th Street SW, Room 5-B530
Washington, DC 20554



Lenora Biera-Lewis

*** VIA HAND DELIVERY**

BELLSOUTH

BellSouth Corporation
Suite 1800
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610

M. Robert Sutherland
General Attorney

404 249-4839
Fax 404 249-2385

November 18, 1999

Glenn T. Reynolds
Chief, Enforcement Bureau
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W.
Room 5-A865
Washington, DC 20554

Re: Request for Inclusion on Accelerated Docket

Dear Mr. Reynolds:

BellSouth Public Communications, Inc., a payphone service provider, seeks inclusion on the Accelerated Docket of the enclosed complaint against One Call Communications, Inc., an interexchange carrier, for immediate payment of per-call compensation under the Communications Act.

The single issue presented is simple and suited for decision under the constraints of the Accelerated Docket:

The Commission has held that an interexchange carrier may not use self-help to avoid paying per call compensation once it receives a payphone provider's eligibility certification. BellSouth certified its eligibility to One Call, but One Call refuses to pay until the FCC resolves current PICC proceedings. Can One Call refuse to pay BellSouth compensation otherwise owed until the FCC resolves the PICC proceedings?

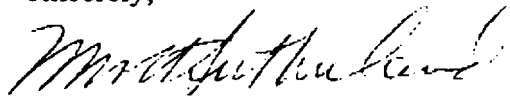
Discovery is unnecessary. One Call has conceded its liability in the course of numerous attempts by BellSouth to obtain payment. It has never challenged BellSouth's eligibility certification. Instead, One Call has indicated its frustration with having to pay PICCs to local exchange carriers, and has insisted on delaying payment to BellSouth until pending proceedings concerning PICCs are resolved. One Call has not responded to a formal demand for payment dated August 19, 1999. BellSouth advised One Call that its formal demand would serve as the basis for a formal complaint. However, in light of the

Glenn T. Reynolds
Chief, Enforcement Bureau
November 18, 1999
Page 2

simplicity of the issue presented, and the recent controlling authority of *Bell Atlantic-Delaware, et al. v. Frontier Communications Services, Inc., et al.*, File No. E-98-48, *Memorandum Opinion and Order*, DA-99-1971 (Common Carrier Bureau, September 24, 1999) and *Ameritech Illinois, et al. v. MCI Telecommunications Corporation, Memorandum Opinion and Order*, DA-99-2449 (Common Carrier Bureau, November 4, 1999), the quickest way to resolve this dispute is through supervised pre-filing settlement negotiations or inclusion on the Accelerated Docket.

We enclose a draft Accelerated Docket complaint; (2) BellSouth's demand letter; and (3) the Commission orders that control the single issue presented.

Sincerely,



cc: Frank G. Lamancusa
Chief, Accelerated Complaint Resolution Branch
(w/enc.)

Ann Bernard, Corporate Counsel
One Call Communications, Inc.
(w/enc.)

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
BellSouth Public Communications, Inc.)	File No. ____
)	
)	
Complainant,)	
)	
v.)	
)	
One Call Communications, Inc.)	
)	
Defendant.)	

COMPLAINT

1. Summary: BellSouth Public Communications, Inc. (BellSouth) seeks payphone compensation that One Call Communications, Inc. (One Call) owes, but which One Call but refuses to pay. One Call contends that it will not pay BellSouth until FCC proceedings concerning the Presubscribed Interexchange Carrier Charge (PICC) are resolved. However, the Commission recently stated that IXCs must pay compensation upon receipt of certification; that there is no exception to this absolute obligation to pay; and that the Commission strongly disfavors self-help remedies. BellSouth has certified its eligibility to One Call, but One Call continues to resort to self-help to avoid its obligation.

2. Parties' Names, Occupations and Addresses: BellSouth provides payphone services as a structurally separate corporate subsidiary of BellSouth Telecommunications, Inc. (BST), a local exchange carrier (LEC). One Call is an interexchange carrier (IXC). The parties'

addresses and telephone numbers, as well as the name, address and telephone number of BellSouth's attorneys working on this complaint are provided on page 4.

3. Violations: One Call violates 47 C.F.R. § 64.1300, implementing section 276 of the Communications Act, by refusing to compensate BellSouth for compensable calls One Call carries from BellSouth's payphones. One Call has an absolute obligation to comply with this rule and may not engage in self-help. *Bell Atlantic-Delaware, et al. v. Frontier Communications Services, Inc., et al.*, File No. E-98-48, *Memorandum Opinion and Order*, DA-99-1971 (Common Carrier Bureau, September 24, 1999) and *Ameritech Illinois, et al. v. MCI Telecommunications Corporation*, *Memorandum Opinion and Order*, DA-99-2449 (Common Carrier Bureau, November 4, 1999).

4. Facts: BST is a LEC that certified to One Call that it satisfied the Commission's payphone compensation eligibility requirements. One Call is an IXC that carried completed calls from BellSouth's payphones. BellSouth has advised One Call of its obligation to pay BellSouth payphone compensation and has provided One Call with its quarterly list of payphones between October 1, 1997 and June 30, 1999. One Call has never paid BellSouth compensation for any of these calls, despite BellSouth's repeated informal and formal demands for payment and One Call's acknowledgement that it has completed compensable calls and for BellSouth's payphones.

5. Relief Sought: BellSouth seeks a bifurcated determination of liability and damages. One Call must pay BellSouth the Commission's effective per-call compensation "default" rate, including 11.25% interest from the original due date.

6. No Separate Action: BellSouth has not filed a separate action with the Commission, any court, or other government agency based wholly or partially on the same claim or facts, and

does not seek identical prospective relief in any current Commission notice-and-comment proceeding.

7. Automatic Document Production: BellSouth will serve copies of documents that are likely to bear significantly on BellSouth's case on One Call with this complaint.

Respectfully submitted,

**BELLSOUTH PUBLIC COMMUNICATIONS,
INC.**

Gail F. Barber
2nd Floor
75 Bagby Drive
Homewood, AL 35209

Its Attorney

BELLSOUTH CORPORATION

M. Robert Sutherland
Suite 1700
1155 Peachtree Street, NE
Atlanta, GA 30309-3610

Its Attorneys

Date: _____

**Accelerated Docket Proceeding:
Answer Due With Ten Days of Service**

DRAFT - 11/18/99

CERTIFICATE OF SERVICE

I certify that on _____, 1999, I served copy of this complaint by hand delivery on One Call Communications as well as the Commission staff that supervised pre-filing settlement discussions.

#113586 v1 - BSC Complaint



BellSouth Public Communications, Inc.
75 Bagby Drive
Homewood, Alabama 35208

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

August 19, 1999

VarTec Telecom Inc.
Ms. Amanda Beatty
3200 West Pleasant Run Road
Lancaster, Texas 75146

Re: Payphone Compensation (Dial-Around)

Dear Ms. Beatty:

This letter is sent as a formal demand for appropriate payment of per call compensation for "Dial-Around"¹ calls made from BellSouth Public Communications, Inc. ("BSPC") payphones during the fourth quarter of 1997. The Federal Communications Commission ("FCC") has established a payphone compensation plan under section 276 of the Telecommunications Act of 1996 that obligates the long distance carriers to compensate the payphone service providers ("PSP") on a "per call" basis for each dial around call.² Under the FCC's plan, the payor bears the burden for tracking "Dial-Around" calls and remitting payment on a quarterly basis to qualified PSPs at a specified "per call rate".³ As stated by the Commission "...IXCs must compensate PSPs for all coinless payphone calls not otherwise compensated pursuant to contract..., including subscriber 800 and access code calls, certain 0+ and inmate calls."⁴

¹ "Dial-around" calls consist of long distance calls that utilize a long distance carrier other than where the payphone's presubscribed carrier has an agreement to otherwise compensate the PSP (e.g. 1-800-COLLECT, 10-10-288, or 1-800-LLBEAN). Absent an agreement, the presubscribed carrier must compensate the PSP for presubscribed calls (e.g. 0+, inmate collect only).

² *In re Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, *First Report and Order*, FCC 96-388 (released September 20, 1996, 11 FCC Red 20541) ("First Report and Order"), *on reconsideration*, FCC 96-439 (November 8, 1996, 11 FCC Red 21233) ("Reconsideration Order"). The *First Report and Order* and the *Reconsideration Order* are commonly referred to as the "Payphone Orders". The Payphone Orders were affirmed in part and vacated in part. See *Illinois Public Telecom Assn., v. FCC*, 117 F.3d 555 (D.C. Cir. 1997). On remand, the FCC issued its *Second Report and Order*, 13 FCC Red 1778 (1997) ("Second Report and Order"). The Second Report and Order was appealed. On appeal, the Court remanded certain issues to the Commission. See *MCI Telecomm. Corp. et al. v. FCC* Docket No. 96-128 (released February 4, 1999) ("Third Report and Order").

³ See 47 CFR SECTION 64.1310(a). Under the Payphone Orders, the per call rate was established at \$.35. Under the Second Report and Order, the per call rate was adjusted to \$.284. Under the Third Report and Order, which became effective thirty (30) days after the Order was published in the Federal Register, the per call rate is bifurcated with a default rate of \$.238 applying to the period between October, 1997 and the Order's effective date and a default rate of \$.24 applying on a prospective basis from the period beginning on the effective date of the Order (April 21, 1999.)

⁴ See Third Report and Order, par.230.

BSPC has previously notified your company of your responsibility to pay per-call compensation. Per our records, BSPC's ANI lists for the quarters from October 1, 1997 through March 31, 1999 have been previously delivered to your company. As of the date of this letter, BSPC has yet to receive appropriate per-call compensation payments from your company for the quarter ended December 31, 1997. BSPC contacted Amanda Beatty of the VarTec COCOT Processing Department to discuss the underpayment. Amanda stated that two issues prevented the true-up of the compensation paid. The first issue was that VarTec was unable to physically use the BST LEC list to verify the majority of the BSPC ANIs, therefore, over 166,000 of our ANI's were not paid. According to the FCC's original order regarding per-call compensation and the verification process using the LEC supplied information, "carriers should be able to avoid payment only when the LEC issues a negative response to the verification inquiry."³ The inability of VarTec to utilize the information supplied from a LEC (BST) is not a valid reason for non-payment of your per-call compensation liability.

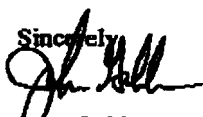
The other issue related to the expiration of timeframe for claiming the per-call compensation owed to BSPC. BSPC rightfully claimed its compensation due when the BSPC ANI list was mailed to your company. Also, BSPC has held several discussions relating to the underpayment issue with VarTec at various times during 1998 to no avail. Therefore, BSPC appropriately filed its claim for compensation within the proper timeframe and VarTec's delay in processing our payment does not relieve VarTec's liability for payment. To the contrary, the FCC mandates that interest at 11.25% be added to the liability beyond the original due date.

BSPC would like to work with your company to facilitate payment by identifying and resolving any disputes in an amicable, but timely, way. BSPC reserves its right to take whatever legal action it deems necessary to protect its interests, including filing formal complaints with the FCC or the appropriate court. In that case, BSPC may seek interest and reimbursement of all legal costs incurred in recovering the per-call compensation owed.

Please respond to this letter within 10 days of receipt, with payment in full including interest at the FCC mandated rate of 11.25%⁶, including the appropriate call detail records to verify the amount paid, or advise BSPC of the reason you are unable to determine the amount to be paid and when you expect to have the problem solved.

Be advised that if we are unable to resolve this matter or if you do not respond within 2 weeks time, this letter may serve as the basis for a formal complaint with the FCC pursuant to §1.721 (a)(8) of the FCC's rules.

Sincerely,



John Golden
AVP - Finance

³ See First Report and Order, par. 114.

⁶ See Third Report and Order, par. 187.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Ameritech Illinois, U S WEST)	
Communications, Inc., <i>et al.</i> ,)	
COMPLAINANTS,)	
)	
v.)	File Nos. E-98-51, E-98-53
)	
MCI Telecommunications Corporation,)	
DEFENDANT,)	
)	
and)	
)	
Ameritech Illinois, Pacific Bell, <i>et al.</i> ,)	
COMPLAINANTS,)	
)	
v.)	File Nos. E-98-50, E-98-54,
)	E-98-55, E-98-56, E-98-57,
Frontier Communications Services, Inc. <i>et al.</i>)	E-98-58, E-98-59, and E-98-60.
DEFENDANTS.)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: November 4, 1999; Released: November 8, 1999

By the Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In this order, we resolve several formal complaints filed by local exchange carriers (LECs) Pacific Bell, *et al.* (SBC), Ameritech Illinois, *et al.*, (Ameritech) and U S WEST Communications Corporation (U S WEST) (collectively Complainants)¹ against defendant

¹ The Complainant LECs are as follows: Illinois Bell Telephone Company, Inc., d/b/a Ameritech Illinois, Indiana Bell Telephone Company, Inc., d/b/a Ameritech Indiana, Michigan Bell Telephone Company, Inc., d/b/a Ameritech Michigan, The Ohio Bell Telephone Company, d/b/a Ameritech Ohio, Wisconsin Bell, Inc., d/b/a Ameritech Wisconsin (Ameritech); Pacific Bell, Nevada Bell, and Southwestern Bell Telephone Company (SBC); and U S WEST Communications Corporation (U S WEST).

interexchange carriers (IXCs) Frontier Communications Services, Inc. *et al.* (Frontier)² and MCI Telecommunications Corporation (MCI)³ (collectively Defendants), pursuant to section 208 of the Communications Act of 1934, as amended (Act).⁴ Complainants contend that Defendants violated section 276 of the Act and section 64.1300 of the Commission's rules by refusing to pay payphone compensation for compensable calls that originated on Complainants' payphones even though Complainants had certified their compliance to the IXCs. Pursuant to section 276 of the Act, and the Commission's implementing rules and orders, IXCs are required to compensate payphone service providers—including LEC payphone service providers—for certain completed intrastate and interstate calls originated from the payphone service providers' payphones.

2. Defendants each filed an answer arguing that Complainants are not entitled to payphone compensation for the calls at issue because Complainants have not adequately certified that they have complied with the payphone compensation prerequisites set forth in the *Payphone Orders*.⁵ Defendants argue that certification requires that each complainant prove to Defendants' satisfaction that it has met all of the payphone compensation prerequisites, including the removal of intrastate payphone subsidies from the LEC's rates.⁶

3. On September 24, 1999, the Common Carrier Bureau (Bureau) adopted an order resolving Bell Atlantic's formal complaints against Frontier and MCI concerning their refusal to pay payphone compensation to Bell Atlantic.⁷ In that order, the Bureau concluded that the term "certification" as set forth in the *Order on Reconsideration*, does not require a LEC payphone

² Frontier Communications Services, Inc., Frontier Communications International, Inc., Frontier Communications of the West, Inc., Frontier Communications - North Central Region, Inc., Frontier Communications of New England, Inc., and Frontier Communications of the Mid Atlantic, Inc. (collectively Frontier).

³ Subsequent to the filing of this complaint, Defendant MCI merged with WorldCom. This order is binding on all named parties and their successors in interest.

⁴ 47 U.S.C. § 208. Section 208 gives a party the right to file a complaint with the Commission if it believes that a common carrier acted or failed to act in contravention of the Act or of a Commission rule or order. Complainant Ameritech brought formal complaints against both Frontier and MCI; Complainant SBC brought a formal complaint against Frontier; and Complainant U S WEST brought a formal complaint against MCI. We have consolidated these proceedings for disposition because of the similarity of the issues and arguments raised by the parties. In this order, we will discuss the briefs and pleadings individually only where necessary to address unique or individual arguments made by a party.

⁵ See *Order on Reconsideration*, 11 FCC Rcd 21,233 (1997).

⁶ See, e.g., Frontier Brief (SBC) at 5 (stating that "an exchange carrier must submit credible documentary evidence that it satisfies the preconditions contained in section 276 to the receipt of payphone compensation.").

⁷ See *Bell Atlantic v. Frontier, Memorandum Opinion and Order*, DA 99-1971 (Sept. 24, 1999) (*Bell Atlantic v. Frontier*).

service provider to demonstrate to the IXC payor that the LEC has satisfied each payphone compensation prerequisite.⁸ Instead, the Bureau concluded that under the Commission's rules and orders, a LEC sufficiently "certifies" its compliance with the prerequisites by attesting authoritatively to an IXC payor that such LEC has satisfied each payphone compensation prerequisite.⁹ The complaints resolved in this Order raise the same issues addressed in *Bell Atlantic v. Frontier*: specifically, whether the term "certification" requires a LEC to provide evidence to the IXC payor demonstrating that such LEC has satisfied each payphone compensation prerequisite. Defendants have not raised any new legal arguments in response to the complaints now before us to support their claim that certification requires a LEC to demonstrate its compliance with the payphone compensation prerequisites to the IXC payors. Thus, we find that the analysis set forth in the *Bell Atlantic v. Frontier* order is applicable to the instant complaints. Accordingly, we incorporate by reference into this Order, the analysis and supporting rationale of the *Bell Atlantic v. Frontier* order.

4. Applying the analysis set forth by the Bureau in *Bell Atlantic v. Frontier*, we conclude in this Order that each complainant adequately certified to Defendants that it satisfied the payphone compensation prerequisites. We order Defendants to pay payphone compensation to Complainants for all compensable calls routed to them that originated from Complainants' payphones during the fourth quarter of 1997, the first quarter of 1998, and all subsequent calls, as required by the Act and the Commission's rules.

II. BACKGROUND

A. Statutory Authority.

5. In the *Payphone Orders*,¹⁰ the Commission adopted new rules and policies governing the payphone industry to implement section 276 of the Act. Those rules and policies: (1) establish a plan to ensure fair compensation for "each and every completed intrastate and interstate call using [a] payphone[:]" (2) establish a plan to discontinue intrastate and interstate carrier access charge service elements and payments in effect on such date of enactment, and all intrastate and interstate payphone subsidies from basic exchange services; (3) prescribe nonstructural safeguards for Bell Operating Company (BOC) payphones; (4) permit the BOCs to negotiate with location providers regarding the interLATA carrier presubscribed to their payphones; (5) permit all payphone service providers to negotiate with location providers about

⁸ See *id.* at para. 3.

⁹ See *id.*

¹⁰ Report and Order, 11 FCC Rcd 20,541; Order on Reconsideration, 11 FCC Rcd at 21,233. There have been many orders in CC Docket No. 96-128, including the *Payphone Orders*, which address a variety of payphone-related issues. We will refer to this docket as the payphone proceeding.

the intraLATA carriers that are presubscribed to their payphones; and (6) adopt guidelines for use by the states in establishing public interest payphones to be located "where there would otherwise not be a payphone[.]"¹¹

6. In the *Payphone Orders*, consistent with section 276 of the Act, the Commission concluded that all payphone service providers, including LEC payphone service providers, must be compensated for "each and every completed intrastate and interstate call" originated from their payphones.¹² The Commission further concluded that IXCs, the primary economic beneficiary of such calls, would be responsible for compensating the payphone service providers.¹³ The Commission determined that LEC payphone service providers would be eligible to receive compensation for completed calls originated from their payphones once they had satisfied certain requirements. Specifically, to receive compensation, the Commission required that each LEC "must be able to certify" that it had complied with those prerequisites.¹⁴

7. In the *Payphone Orders*, the Commission did not set forth any requirements for the form of such a certification. The Commission subsequently stated in the *Second Report and Order*, however, that LEC payphone service providers are not required to file such a certification with any state or federal regulatory agency or to obtain a formal certification of compliance from either the Commission or the states to be eligible to receive per-call compensation pursuant to the *Payphone Orders*.¹⁵ Addressing certification in the *Bureau Intrastate Tariffing Waiver Order*,

¹¹ 47 U.S.C. § 276(b). Section 276(b)(1)(B) directed the Commission to discontinue the above-mentioned carrier access charge service elements and payments in effect on such date of enactment and intrastate and interstate payphone subsidies in favor of a compensation plan that would ensure fair compensation for each and every completed call as set forth in section 276(b)(1)(A). Only certain payphone owners were entitled to subsidies.

¹² See 47 U.S.C. § 276(b)(1)(A) (directing the Commission to establish a plan "to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone"); 47 C.F.R. § 64.1300(a) (requiring "every carrier to whom a completed call from a payphone is routed [to] compensate the payphone service provider for the call . . ."). See also *Report and Order*, 11 FCC Rcd at 20,566, para. 48.

¹³ For purposes of paying compensation for compensable calls and other associated obligations, such as tracking calls, the term "IXC" includes a LEC when it provides interstate, intraLATA toll service. See *Report and Order*, 11 FCC Rcd at 20,584, para. 83 n.293; *Order on Reconsideration*, 11 FCC Rcd at 21,270, paras. 74-75 & 21,278, para. 92. Under the *Third Report and Order*, the default per-call compensation amount is \$0.24 absent negotiation to receive a different amount. See *Third Report and Order*, 14 FCC Rcd at 2552, paras. 14, 196 (setting forth the history of Commission payphone compensation plans and establishing the compensation amount retroactive to October 7, 1997).

¹⁴ *Order on Reconsideration*, 11 FCC Rcd at 21,293-94, paras. 131-32; see *infra* para. 12 (listing specific requirements).

¹⁵ See *Second Report and Order*, 13 FCC Rcd at 1780, para. 1 n.9; see also *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Memorandum Opinion and Order, 13 FCC Rcd 4998, 5001-02, para. 4 (1998) (*Bureau Coding Digit Waiver Order*) (emphasizing

the Bureau stated that, although the Commission does not require a LEC payphone service provider to file a certification with it, nothing in the *Payphone Orders* prohibits an IXC payor from requesting such a certification from the LECs.¹⁶ In the *Bureau Coding Digit Waiver Order*, the Bureau further stated that "LECs that have certified to the IXC that they comply with the requirements of the *Payphone Orders* must receive per-call compensation."¹⁷ In *Bell Atlantic v. Frontier*, the Bureau concluded that certification does not require a LEC to prove to the IXCs' satisfaction that such LEC has complied with the prerequisites to payphone compensation.¹⁸

B. The Complaints.

8. Complainant LECs provide local exchange and payphone services in certain regions within the United States.¹⁹ Defendants Frontier and MCI are IXCs that provide both interstate and intrastate telephone toll service.²⁰ Defendants are subject to payphone compensation obligations set forth in the Commission's rules and orders and the Act.²¹ Since October 7, 1997, the beginning of per-call compensation, each Complainant has delivered calls from its payphones to Defendants.²²

that there are no state or federal certification requirements).

¹⁶ See *Bureau Intrastate Tariffing Waiver Order*, 12 FCC Rcd at 21,380, para. 22.

¹⁷ *Bureau Coding Digit Waiver Order*, 13 FCC Rcd at 5001-02, para. 4 (emphasis added); see also *infra* para. 27 (discussing the rights of a payor to challenge a certification).

¹⁸ See *Bell Atlantic v. Frontier* at para. 3.

¹⁹ See Ameritech Complaint (Frontier) at para. 2 (stating that Ameritech provides service in the following states: Illinois, Indiana, Michigan, Ohio, and Wisconsin); see also SBC Complaint at para. 2 (stating that Pacific Bell provides service in California; Nevada Bell provides service in Nevada; and SWBT provides service in Arkansas, Kansas, Missouri, Oklahoma, and Texas); see also U S WEST Complaint at para. 2 (stating that U S WEST provides service in the following states: Minnesota, Iowa, Nebraska, North Dakota, South Dakota, Montana, Idaho, Wyoming, Utah, Colorado, Arizona, New Mexico, Washington, and Oregon).

²⁰ See Ameritech Complaint (MCI) at para. 3; MCI Answer (Ameritech) at para. 3; Frontier Answer (SBC) at para. 3.

²¹ See, e.g., 47 C.F.R. § 64.1300(a). Section 64.1300(a) provides, "every carrier to whom a completed call from a payphone is routed shall compensate the payphone service provider for the call" See also Ameritech/Frontier Joint Statement at 2; Ameritech/MCI Joint Statement at 2 (stating that Defendants are subject to section 64.1300 of the Commission's rules).

²² See, e.g., Ameritech/Frontier Joint Statement at 2; Ameritech/MCI Joint Statement at 2 (stating that since October 8, 1997, calls have been carried by MCI. The one day difference between the statement in the complaint and the statement in the joint statement does not affect our decision regarding the liability for the calls at issue. This minor discrepancy goes toward the amount of damages due.); see also U S WEST Complaint at para. 8; SBC Complaint at para. 8.

9. To obtain compensation for calls that originated from its payphones, each Complainant sent letters to Defendants stating that it was eligible to receive payphone compensation.²³ Defendants Frontier and MCI responded similarly to Complainants' letters, each stating that it would not pay compensation until the LEC had provided evidence to the IXC payor that demonstrated that such LEC had complied with the payphone compensation prerequisites.²⁴ Both Frontier and MCI, however, paid compensation in some states.²⁵

10. Additionally, in June 1998, representatives from each LEC met with representatives from MCI and Frontier (on separate occasions), along with certain Commission staff members, to discuss Defendants' obligations to pay payphone compensation.²⁶ During these meetings, Commission staff stated that the *Payphone Orders* clearly mandated that IXCs must compensate a LEC payphone service provider upon receipt of the LEC's certification of eligibility without further inquiry or requirements. Nonetheless, each Defendant stated that it would not compensate the LECs until the LEC *had proven* to each Defendant's satisfaction that the LEC had satisfied the payphone compensation prerequisites.²⁷

11. In August 1998, Ameritech brought a formal complaint against MCI and Frontier, and U S WEST brought a formal complaint against MCI.²⁸ In September 1998, SBC brought a

²³ See, e.g., Ameritech Complaint (MCI) at para. 14 (stating that by "letter dated April 17, 1997, Ameritech certified to MCI that it had satisfied all of the prerequisites to eligibility for receipt of payphone compensation"). Each LEC's attempts to receive payphone compensation will be discussed in the discussion section. See *infra* paras. 19-25.

²⁴ See, e.g., Frontier Answer (SBC) at para. 85 (stating that as "a precondition of receiving payphone compensation SBC was required to demonstrate that it has removed payphone costs and subsidies from its interstate and intrastate rates); see also SBC Complaint at Exhibit D (Letter to Ronald M. Jennings, Vice President, Operator Services, Southwestern Bell Telephone from Michael J. Nighan, Director-Regulatory Affairs, Frontier Communications (June 30, 1997) (stating that "the only procedures under which The Frontier Companies will pay such compensation were clearly spelled out in a letter mailed to your company on May 13, 1997 by the National Payphone Clearinghouse, Frontier's designated agent in this matter. . . Frontier requested that you provide copies of specifically cited materials rather than merely stipulating that you have complied with the [Commission's] checklist.")).

²⁵ See, e.g., MCI Brief (U S WEST) at 10 (stating that MCI made payments in 6 states where U S WEST provided "documentation which proves that it has removed from its rates charges that recover costs of payphones and intrastate subsidies). See also SBC Complaint at para. 21 (stating that Frontier paid partial compensation in Nevada and Kansas).

²⁶ See SBC Complaint at para. 30; Ameritech Complaint (MCI) at 12; U S WEST Complaint at para. 14.

²⁷ See, e.g., Frontier Answer (Ameritech) at para. 24; MCI Answer (U S WEST) at para. 17.

²⁸ See *supra* note 25 (stating that MCI paid compensation in some U S WEST states). U S WEST limited the scope of its complaint to compensation for calls originating from U S WEST payphones in the 9 states in U S

formal complaint against Frontier. Each complaint alleged that Defendants' refusal to pay payphone compensation violated section 276 of the Act and the Commission's implementing rules and orders. To facilitate resolution of the issues addressed in each complaint, the Enforcement Division of the Common Carrier Bureau (Division) held a status conference in each particular case for the parties. At each conference, the Division directed the parties to brief two specific issues: (1) what constitutes a "certification" as required by the Commission's *Payphone Orders*, and has the LEC complied with this certification requirement; and (2) are there any circumstances under which an IXC may refuse to pay payphone compensation after receiving a certification from a payphone service provider.

III. DISCUSSION

A. Certification does not require proof of compliance to the IXC payor.

12. In the *Payphone Orders*, the Commission set forth prerequisites that LEC payphone service providers must satisfy to be eligible to receive payphone compensation.²⁹ In doing so, the Commission delineated explicit guidelines that LECs must follow to satisfy each prerequisite, including, in some cases, filing tariffs satisfying the prerequisite.³⁰ In the *Order on Reconsideration*, the Commission stated that once these prerequisites had been met, "[t]o receive compensation, a LEC must be able to certify the following"

(1) it has an effective cost accounting manual (CAM) filing; (2) it has an effective interstate CCL tariff reflecting a reduction for deregulated payphone costs and reflecting additional multiline subscriber line charge (SLC) revenue; (3) it has effective intrastate tariffs reflecting the removal of charges that recover the costs of payphones and any intrastate [payphone] subsidies; (4) it has deregulated and reclassified or transferred the value of payphone customer premises equipment (CPE) and related costs as required in the *Report and Order*; (5) it has in effect intrastate tariffs for basic payphone services (for "dumb" and "smart" payphones);

WEST's service area where MCI has refused to pay any per-call compensation: Colorado, Idaho, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, and Washington. See U S WEST Complaint at para. 1.

²⁹ See *Report and Order*, 11 FCC Rcd at 20,604-34, paras. 127-87 (establishing eligibility requirements to receive per-call compensation); see also *Order on Reconsideration*, 11 FCC Rcd at 21,299-21,329, paras. 142-220 (further discussing such requirements). These orders listed the steps LECs must take to satisfy the prerequisites including what tariffs, if any, were required to be filed with either the states or the Commission.

³⁰ See *Report and Order*, 11 FCC Rcd at 20,604-34, paras. 127-87 (establishing eligibility requirements to receive per-call compensation); see also *Order on Reconsideration*, 11 FCC Rcd at 21,299-21,329, paras. 142-220 (further discussing such requirements).

and (6) it has in effect intrastate and interstate tariffs for unbundled functionalities associated with those lines.³¹

The Commission also required these LECs that are BOCs to "have approved [comparably efficient interconnection (CEI)] plans for basic payphone services and unbundled functionalities prior to receiving compensation."³²

13. Complainants contend that they are entitled to receive payphone compensation from Defendants because each LEC "certified" to Defendants that it complied with the Commission's payphone compensation prerequisites.³³ Defendants argue that the statements that the LEC "certifies" that it has complied with the Commission's prerequisites do not constitute a "certification" as required by the Commission's orders. Instead, Defendants contend that certification requires a LEC to provide evidence to the IXC payors demonstrating that the LEC actually has met the Commission's payphone compensation prerequisites.³⁴ Defendants thus contend that the LECs are not entitled to payphone compensation, because the LECs have not provided the IXCs proof positive that such LECs satisfied the compensation eligibility prerequisites, including the requirement that the LEC remove intrastate payphone subsidies from its intrastate rates.³⁵

³¹ *Order on Reconsideration*, 11 FCC Rcd at 21,293, para. 131. See also *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, *Order*, 12 FCC Rcd 21,370, 21,374, para. 10 (Com. Car. Bur. Apr. 15, 1997) (*Bureau Intrastate Tariffing Waiver Order*) (stating that the requirements for intrastate tariffs are as follows:

that (1) payphone service intrastate tariffs be cost-based, consistent with Section 276, nondiscriminatory and consistent with Computer III tariffing guidelines; and (2) that the states ensure that payphone costs for unregulated equipment and subsidies be removed from the intrastate local exchange service and exchange access service rates) (citations omitted).

³² *Order on Reconsideration*, 11 FCC Rcd at 21,294, para. 132. The Commission also required payphone service providers to transmit payphone-specific coding digits to IXCs before payphone service providers would be eligible to receive compensation. Due to difficulties implementing coding digits, the Bureau granted limited waivers of the payphone service providers' obligation to provide coding digits, but reiterated that these waivers did not negate an IXC's obligation to pay payphone compensation. *Bureau Coding Digit Waiver Order*, 13 FCC Rcd at 4998. The provision of coding digits is not part of the Commission's certification "requirement" and is not at issue in this Order.

³³ See, e.g., U S WEST Brief at 5 (stating that U S WEST sent a comprehensive letter to MCI certifying that U S WEST has satisfied the applicable requirements); SBC Brief at 3.

³⁴ See, e.g., MCI Brief (U S WEST) at 4; Frontier Brief (SBC) at 5.

³⁵ See, e.g., MCI Brief (U S WEST) at 9; Frontier Answer (SBC) at para. 85.

14. To resolve the complaints before us, we must determine whether each of the LEC's purported certification letters, which state that the LEC has complied with each compensation eligibility prerequisite, constitute a valid certification thus triggering a payment obligation by Defendants. In *Bell Atlantic v. Frontier*, which presented the same legal issues raised in the present complaints, the Bureau concluded that the term "to certify" as set forth in the *Order on Reconsideration* does not require a LEC to demonstrate to the IXC payor's satisfaction that such LEC has met each compensation eligibility prerequisite. Instead, the Bureau concluded that "to certify" requires a LEC to attest that it has complied with each compensation eligibility prerequisite.³⁶

15. In the present case, Defendants contend that certification should require a LEC to provide actual proof of compliance of each payphone compensation prerequisite to the IXC payor, not solely an attestation of compliance. Defendants recognize that the Commission has not specifically defined the term "certification" in the context of payphone compensation.³⁷ Defendants argue, however, that certification mechanisms are used in other contexts that are analogous to the instant matter, and that such mechanisms require the submission of evidence to constitute certification.³⁸ For example, Defendants argue that D.C. Circuit Court's decision in *Committee to Elect Lyndon LaRouche v. Federal Election Commission*,³⁹ which found a candidate's certification to be insufficient without supporting documentation, illustrates that certification requires proof of actual compliance.⁴⁰ In contrast, Complainants contend since neither the Commission's orders nor statutory authority define the term "to certify," the ordinary meaning of the term should be applied.⁴¹

16. We reject Defendants arguments for the reasons stated in *Bell Atlantic v. Frontier*. In that order, the Bureau found that certification requires a LEC to attest that it has complied with the payphone compensation prerequisites.⁴² The Bureau stated that certification does not require

³⁶ See *Bell Atlantic v. Frontier* at para. 17. As stated above, the *Order on Reconsideration* does not require a LEC to provide any form of a certification to the IXC payor (or to any other entity). Instead, the *Order on Reconsideration* merely requires that a LEC "must be able to certify." The requirement that a LEC "be able to certify" is triggered by an IXC payor's request, as permitted in the *Bureau Intrastate Tariffing Waiver Order*, to see such a certification.

³⁷ See, e.g., MCI Brief (U S WEST) at 4; Frontier Reply Brief (Ameritech) at 6.

³⁸ See MCI Brief (U S WEST) at 4; Frontier Brief (SBC) at 7-8.

³⁹ 613 F.2d 834 (D.C. Cir. 1978).

⁴⁰ See MCI Brief (U S WEST) at 4-5 (citing *Committee to Elect LaRouche*, 613 F.2d at 834); Frontier Brief (SBC) at 9-10.

⁴¹ See, e.g., SBC Brief at 5.

⁴² See *Bell Atlantic v. Frontier* at para. 17.

a LEC to prove to the LXC payor that such LEC has satisfied each payphone compensation prerequisite.⁴³ In reaching that conclusion, the Bureau examined the use of the ordinary meaning of the term "to certify"—the formal assertion in writing of some fact⁴⁴—and found that in the context of payphone compensation, the ordinary meaning of the term "certification" signifies an assertion or representation by the certifying party, not, as Defendants' assert, a demonstration of proof of the facts being asserted.⁴⁵ The Bureau further stated that the Commission also has applied the ordinary meaning of the term "to certify" in other contexts where the Commission has not identified specific criteria to constitute "certification," such as in the context of a formal complaint.⁴⁶ The Bureau found that nothing in the *Payphone Orders* suggests other than the ordinary meaning of the term "to certify."

17. The Bureau also found Defendants' arguments supporting a broader meaning of the term "certify" to be unpersuasive. In particular, the Bureau found that MCI's reliance on *Committee to Elect LaRouche* to be misplaced. The Bureau stated that unlike the statute at issue in *Committee to Elect LaRouche*, section 276 does not contain any certification requirements.⁴⁷ Moreover, the Bureau stated that the statute at issue in *Committee to Elect LaRouche* specifically required review of the certification by a federal agency to determine if the candidate was eligible to receive funding. There is no parallel requirement in the present case. The Bureau further

⁴³ See *id.* at paras. 18-19.

⁴⁴ BLACK'S LAW DICTIONARY at 227 (6th ed. 1990).

⁴⁵ See *id.* at 228 (also defining "certify" as "[t]o authenticate or vouch for a thing in writing." The Commission also stated that Webster's Dictionary defines "certify" as "to attest authoritatively" and "to attest as being true or as represented or as meeting a standard." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY at 223 (1989).

⁴⁶ For example, the Commission's definition of "certify" in the context of a formal complaint proceeding requires that "[t]he signature of an attorney or party shall be a certificate that the attorney or party has read the pleading, motion or other paper; that to the best of his or her knowledge, . . . it is well grounded in fact" See 47 C.F.R. § 1.734(c). section 1.734(c) states in full:

The original of all pleadings and other submissions filed by any party shall be signed by that party, or by the party's attorney. The signing party shall include in the document his or her address, telephone number, facsimile number and the date on which the document was signed. Copies should be conformed to the original. Unless specifically required by rule or statute, pleadings need not be verified. The signature of an attorney or party shall be a certificate that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for the purposes of delay or for any other improper purpose.

⁴⁷ See *Bell Atlantic v. Frontier* at para. 22.

stated that under the defendants' theory that LECs are required to prove to the IXC's satisfaction that such LEC had complied with the payphone compensation prerequisites, the IXC would be the ultimate judge of whether the LEC payphone service provider had complied with the Commission's rules and orders. The Bureau concluded that such outcome would be unacceptable, because it would allow the IXC to delay paying compensation indefinitely. Additionally, section 276 requires that the Commission "ensure all payphone service providers are fairly compensated for each . . . call" made from a payphone.⁴⁸ The Commission has not—and cannot—delegate this statutory requirement to IXCs.⁴⁹

18. Defendants have not presented any new arguments to support their position that "certification" requires proof of compliance with the payphone compensation prerequisites. Instead, Defendants reiterate the arguments presented in *Bell Atlantic v. Frontier*. We therefore conclude that there is no reason to alter the Bureau's determination in *Bell Atlantic v. Frontier* that "certification" requires an attestation of compliance. Accordingly, we now review each complainant's purported certification letters to determine if such letters constitute a "certification."

1. U S WEST v. MCI

19. We conclude that U S WEST's certification letters satisfy the Commission's requirement that a LEC "must be able to certify" as set forth in the *Order on Reconsideration*. To obtain compensation for calls originated from its payphones, Complainant U S WEST sent a letter signed by a U S WEST representative to MCI on May 20, 1997 attesting that U S WEST had satisfied the payphone compensation prerequisites in 13 of the 14 states in U S WEST territory.⁵⁰ Specifically, U S WEST states, "[i]n response to the FCC's implementation requirements for Section 276 [. . .] regarding the new rules and policies governing the payphone industry, U S WEST Communications hereby certifies that it has met all the requirements of the FCC to receive payphone compensation from carriers in all of its states except one."⁵¹ On November 12, 1997, U S WEST updated its certification, and stated that it was eligible to receive payphone compensation in all 14 states in its region.⁵² As detailed above, to constitute a

⁴⁸ 47 U.S.C. § 276.

⁴⁹ See *Bell Atlantic v. Frontier* at paras. 20, 27; see also *Order on Reconsideration*, 11 FCC Rcd at 21,294, para. 132 (delegating the authority to the Bureau to determine whether a LEC had complied with the prerequisites to payphone compensation).

⁵⁰ U S WEST Brief at Attachment (Letter to MCI from Frank H. Hatzenbuehler, Vice President Markets Pricing & Regulatory Support, U S WEST (May 20, 1997)).

⁵¹ *Id.*

⁵² U S WEST Brief at Attachment (Letter to Bill Wilde, Director, Local Financial Systems Management, MCI Telecommunications Corporation from Frank H. Hatzenbuehler, Vice President Markets Pricing & Strategy, U S

certification the LEC must assert that it has complied with the compensation eligibility prerequisites. We find that U S WEST's letters of certification clearly meet this standard.

20. In addition to stating that it had complied with each prerequisite, U S WEST's letters provided a state-by-state status report on the removal of payphone subsidies, PAL tariffs, and unbundled features available in state tariffs.⁵³ We stated above that certification requires an attestation that the LEC has complied with each compensation eligibility prerequisite. Thus, U S WEST not only satisfied its obligation to attest to its compliance, but also provided specific information to the IXC concerning compliance. In light of such thorough filings, MCI had no basis for refusing to pay compensation.

2. SBC v. Frontier

21. SBC argues that it has certified its compliance to Frontier, thus entitling SBC to receive payphone compensation.⁵⁴ SBC further states that its certifications meet and exceed the requirements of the *Payphone Orders*, and that SBC "went the second mile to address Defendants' concerns and to show compliance with the Commission's directives."⁵⁵ In particular, in an effort to obtain per-call compensation, in June 1997, SWBT, Nevada Bell, and Pacific Bell, each sent a letter to Frontier certifying that the particular LEC has satisfied the payphone compensation prerequisites.⁵⁶ In response to SWBT's letter, on June 30, 1997, Frontier stated that it would not pay compensation until SWBT completed requirements set forth by Frontier, specifically, until SBC provided evidence demonstrating that SWBT had complied with each payphone compensation prerequisite, *inter alia*, the removal of intrastate payphone subsidies.⁵⁷ SBC, on behalf of SWBT, subsequently sent a copy of its "certification letter and

Telecommunications Corporation from Frank H. Hatzenbuchler, Vice President Markets Pricing & Strategy, U S WEST (Nov. 20, 1997) (stating "[t]his serves to inform you that . . . the New Mexico Public Utility Commission approved, retroactively to April 15, 1997, U S WEST's intrastate tariff for basic payphone services. . . . Accordingly, U S WEST is in full compliance with the applicable requirements as set forth in the Payphone Orders and is eligible to receive . . . compensation . . . for U S WEST-owned payphones in all of its 14 state telephone service area.")). In response to these letters, U S WEST received payment for its payphones in Wyoming, Iowa, New Mexico, Arizona, and Minnesota. See U S WEST Complaint at Exhibit B (letter to Timothy J. Gates, MCI from Larri Menear, Product Manager, Per-Call Compensation, U S WEST (Apr. 26, 1998).

⁵³ See U S WEST Brief at 5.

⁵⁴ See SBC Brief at 3.

⁵⁵ *Id.*

⁵⁶ See SBC Complaint at paras. 13-15 (stating that SWBT sent a certification letter on June 4, 1997; Nevada Bell sent a certification letter on June 5, 1997; and Pacific Bell sent a certification letter on June 10, 1997).

⁵⁷ See SBC Complaint at Exhibit D (Letter to Ronald M. Jennings, Vice President, Operator Services, Southwestern Bell Telephone from Michael J. Nighan, Director-Regulatory Affairs, Frontier Communications (June

package" to the National Payphone Clearinghouse and to Frontier.⁵⁸ SBC, on behalf of Pacific Bell, Nevada Bell, and SWBT, also issued a subsequent letter on May 30, 1998, stating that all of SBC's companies previously had certified their compliance to Frontier. In these letters, SBC provided additional information, such as statements regarding how the intrastate payphone subsidies had been removed where applicable, "to foreclose any possible objections that you may have."⁵⁹

22. As stated above, in June 1997, SWBT, Nevada Bell, and Pacific Bell each sent a letter signed by a representative of the LEC to Frontier certifying that it had satisfied the payphone compensation prerequisites.⁶⁰ In each letter, SBC states, "[SWBT, Pacific Bell, or Nevada Bell] hereby certifies that it has met the requirements established by the [Commission] to receive compensation from carriers."⁶¹ SBC proceeds to list each requirement and attest that each requirement has been met. Certification, in the context of payphone compensation, requires the LEC to attest its compliance with each prerequisite. We find that each of SBC's June 1997 letters clearly meet this standard.⁶²

30, 1997) (stating that "the only procedures under which The Frontier Companies will pay such compensation were clearly spelled out in a letter mailed to your company on May 13, 1997 by the National Payphone Clearinghouse, Frontier's designated agent in this matter. . . Frontier requested that you provide copies of specifically cited materials rather than merely stipulating that you have complied with the [Commission's] checklist.")). The record does not reflect that Frontier sent a similar letter each to Nevada Bell and Pacific Bell. The record indicates, however, that Nevada Bell and Pacific Bell each corresponded with Frontier regarding Frontier's refusal to pay payphone compensation. See, e.g., Letter to Michael Nighan, Frontier Communications, Inc. from Tom Weber, Vice President-Regulatory Public Communications, SBC (Apr. 27, 1998) (stating that Pacific Bell had been advised that Frontier did not intend to pay payphone compensation and stating that payment was due); Letter to Tom Weber, Vice President-Regulatory Public Communications, SBC from Michael J. Shortley, Senior Attorney and Director, Regulatory Services, Frontier (May 6, 1998) (responding to the April 27, 1998 letter from SBC)).

⁵⁸ See SBC Complaint at para. 12; see also Letter to Michael J. Nighan, Director-Regulatory Affairs, Frontier from Ronald M. Jennings, SBC (Aug. 7, 1997) (stating that "SWBT has fully complied with certification as noted in the package sent to [Frontier]. That package included all applicable orders and documents to substantiate the fact that SBWT met all the necessary certification requirements. A copy of the certification letter and package was subsequently sent to the [NPC].").

⁵⁹ SBC Complaint at Exhibit L (Letter to Michael J. Shortley, Senior Attorney and Director, Regulatory Services, Frontier from Tom Weber, Vice President-Regulatory, Public Communications, SBC (May 30, 1998)).

⁶⁰ See SBC Complaint at paras. 13-15.

⁶¹ SBC Complaint at Attachments A-C (Attachment A: Letter to Mike Malone, Senior Manager, Cost of Access, Frontier from Ronald M. Jennings, Vice President-General Manager, Operator Services, SWBT (June 4, 1997); Attachment B: Letter to Jeanne Boccuzzi, Frontier from M.P. Coffey, CFO and Strategic Planning Vice President, Nevada Bell (June 5, 1997); Attachment C: Letter to Michael Nighan, Frontier from Laura Murdock, Vice President and General Manager, Pacific Bell-Public Communications (June 10, 1997)). The substance of each letter is virtually identical.

⁶² In addition to stating that it complied with each prerequisite, SBC also detailed its compliance with the

3. Ameritech v. Frontier, MCI

23. We also find that Ameritech's letters to Defendants constitute an adequate certification. In an effort to obtain compensation for its payphones, by letter dated April 17, 1997, Ameritech certified to each defendant that it had satisfied all of the prerequisites to payphone compensation.⁶³ Defendants responded similarly to their responses to other LEC payphone service providers, each stating that it would not pay compensation to Ameritech until Ameritech demonstrated that it had complied with the payphone compensation prerequisites. For example, in response to Ameritech's April 17, 1997 letter, on April 18, 1997, MCI requested additional information regarding Ameritech's certification of compliance. Specifically, MCI stated that it would not pay compensation "until each eligible carrier has clearly demonstrated that it has met all criteria necessary for the receipt of such compensation."⁶⁴ Ameritech responded to MCI's April 18, 1997 letter by listing the applicable tariff or order demonstrating that each payphone compensation prerequisite had been satisfied. Ameritech did not provide the tariffs or orders, stating that such documents were public and could be obtained by MCI.⁶⁵

24. Frontier responded similarly to Ameritech's letters, stating that Frontier would not pay compensation until Ameritech provided evidence demonstrating that Ameritech had satisfied the payphone compensation prerequisites. In particular, Frontier requested copies of Ameritech's state tariff and other relevant filings and state commission orders related to the removal of intrastate payphone subsidies.⁶⁶ Based on the evidence in the record, it does not appear that Ameritech responded to Frontier's request for specific information.

25. Nonetheless, we find that Ameritech's letters to Defendants constitute an adequate certification. As stated above, certification requires that Ameritech attest that it has complied with each payphone compensation prerequisite. In its April 17, 1997 letters to Defendants,

prerequisites. Specifically, SBC indicated how each prerequisite had been satisfied, for example, by listing a cite to the order approving SBC's filing. As stated above, certification does not require this additional documentation. In light of this thorough information, Defendants had no basis for refusing to pay compensation.

⁶³ See Ameritech Complaint (Frontier) at para. 14 (citing Letter to Mike Malone, Manager-Cost of Access, Frontier from Vanessa Jackson, Marketing Director, Ameritech Pay Phone Services (Apr. 17, 1997) (Attachment A)); see also Ameritech Complaint (MCI) at para. 14 (citing Letter to Earl Hurter, Senior Manager, MCI from Vanessa Jackson, Marketing Director, Ameritech Pay Phone Services (Apr. 17, 1997) (Attachment A)).

⁶⁴ Ameritech Complaint (MCI) at Exhibit B (Letter to Ellen Gardner, President, Ameritech Payphone Service from Dick Powell, Director, MCI (Apr. 18, 1997)).

⁶⁵ See Ameritech Complaint (MCI) at Exhibit C (Letter to Bill Wilde, Director, Local Financial Systems Management, MCI from Ellen Gardner, Pay Phone Services, Ameritech (Apr. 28, 1997)).

⁶⁶ See Frontier Answer (Ameritech) at para. 24.

Ameritech specifically asserts that it is eligible to receive compensation.⁶⁷ We thus find that Ameritech's letters to Defendants constitute an adequate certification.

B. Eligibility Disputes

26. The Bureau has specifically stated that IXC's *must* pay compensation upon receipt of the LEC's certification.⁶⁸ There is no exception to this absolute obligation to pay upon receipt of certification. As noted above, the *Payphone Orders* delegated to the Bureau the authority to determine whether a LEC had complied with the prerequisites to payphone compensation.⁶⁹ IXC's questioning the veracity of a LEC's certification may challenge the LEC's compliance by initiating a proceeding at the Commission.

27. In the instant matters, neither Frontier nor MCI have availed themselves of this remedy, but instead have undertaken the remedy of self-help by refusing to pay compensation mandated by our rules. As we have stated in other contexts, such self-help remedies are strongly disfavored by the Commission.⁷⁰ We emphasize that a LEC's certification letter does not substitute for the LEC's obligation to comply with the requirements as set forth in the *Payphone Orders*. The Commission consistently has stated that LECs must satisfy the requirements set forth in the *Payphone Orders*, subject to waivers subsequently granted, to be eligible to receive compensation. Determination of the sufficiency of the LEC's compliance, however, is a function solely within the Commission's and state's jurisdiction.

C. Damages.

28. We conclude above that Complainants' letters constitute an adequate certification, such that these letters triggered Defendants' obligation to pay payphone compensation. The Commission bifurcated this proceeding into liability and damages phases. Thus, in accordance with section 1.722(b) of the Commission's rules, each complainant may file a supplemental complaint for damages within sixty days of the release of this order.⁷¹

⁶⁷ See Ameritech Complaint (Frontier & MCI) at Exhibit A (stating that the Commission "approved Ameritech's CEI Plan, Cost Allocation Manual, and the removal of Ameritech's Set Use Fee Tariff and Tariff adjusting the CCL. . . . With these approvals, Ameritech is eligible for [. . .] compensation.").

⁶⁸ See Bureau Intrastate Tariffing Waiver Order, 12 FCC Rcd at 21,380, para. 22.

⁶⁹ See Order on Reconsideration, 11 FCC Rcd at 21,294, para. 132.

⁷⁰ See MCI Telecommunications Corp., Memorandum Opinion and Order, 62 FCC 2d 703, 705-06 (1976) (stating that a customer may not withhold payment of properly billed tariffed charges for voluntarily ordered services).

⁷¹ 47 C.F.R. § 1.722(b).

IV. CONCLUSION AND ORDERING CLAUSES

29. In conclusion, we find that Complainants' letters to Defendants satisfy the Commission's certification requirement. We also find that Defendants' arguments that the LECs were required to demonstrate compliance to their satisfaction are without merit for the reasons stated above. Under Defendants' theory, the IXC would be the ultimate judge of whether the LEC payphone service provider had complied with the Commission's rules and orders. This outcome is unacceptable. First, such a construct would allow the IXC to delay paying compensation indefinitely. Second, the statute requires that the Commission "ensure all payphone service providers are fairly compensated for each . . . call" made from a payphone.⁷² The Commission has not—and cannot—delegate this statutory requirement to IXCs. Therefore, we conclude that Ameritech, SBC, and U S WEST are entitled to receive per-call compensation from Frontier and MCI.

30. Accordingly, IT IS ORDERED, pursuant to Sections 1, 4(i), 4(j), 208, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 208, and 276, that the complaints filed by Illinois Bell Telephone Company, Inc., d/b/a Ameritech Illinois, Indiana Bell Telephone Company, Inc., d/b/a Ameritech Indiana, Michigan Bell Telephone Company, Inc., d/b/a Ameritech Michigan, The Ohio Bell Telephone Company, d/b/a Ameritech Ohio, Wisconsin Bell, Inc., d/b/a Ameritech Wisconsin; and by Pacific Bell, Nevada Bell, and Southwestern Bell Telephone Company against Frontier Communications Services Inc., Frontier Communications International Inc., Frontier Communications of the West Inc., Frontier Communications-North Central Region Inc., Frontier Communications of New England Inc., and Frontier Communications of the Mid Atlantic Inc. ARE GRANTED TO THE EXTENT INDICATED HEREIN.

31. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i), 4(j), 208, and 276 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 208, and 276, that the complaints filed Illinois Bell Telephone Company, Inc., d/b/a Ameritech Illinois, Indiana Bell Telephone Company, Inc., d/b/a Ameritech Indiana, Michigan Bell Telephone Company, Inc., d/b/a Ameritech Michigan, The Ohio Bell Telephone Company, d/b/a Ameritech Ohio, Wisconsin Bell, Inc., d/b/a Ameritech Wisconsin; and by U S WEST Communications Corporation against MCI Communications Corporation IS GRANTED TO THE EXTENT INDICATED HEREIN.

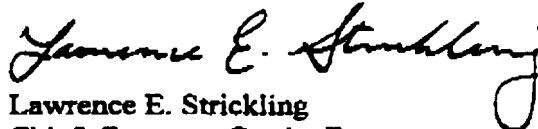
32. IT IS FURTHER ORDERED that Ameritech MAY FILE a supplemental complaint for damages within sixty (60) days pursuant to Section 1.722(b)(2) of the Commission's rules, 47 C.F.R. § 1.722(b).

⁷² 47 U.S.C. § 276.

33. IT IS FURTHER ORDERED that U S WEST MAY FILE a supplemental complaint for damages within sixty (60) days pursuant to Section 1.722(b)(2) of the Commission's rules, 47 C.F.R. § 1.722(b).

34. IT IS FURTHER ORDERED that SBC MAY FILE a supplemental complaint for damages within sixty (60) days pursuant to Section 1.722(b)(2) of the Commission's rules, 47 C.F.R. § 1.722(b).

FEDERAL COMMUNICATIONS COMMISSION


Lawrence E. Strickling
Chief, Common Carrier Bureau